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School District
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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 MICHELE SMITH and M.M., a minor by and
5 through his guardian ad litem MICHELLE
6 SMITH

7 Plaintiffs,

8 v.

9 ANTIOCH UNIFIED SCHOOL DISTRICT,
10 TOBINWORLD, SARA FORGHANI,
11 ANDREW ALTES and DOES 1-30,

12 Defendants.

Case No. 16-cv-01676

The Hon. Richard Seeborg

**STIPULATION AND ~~[PROPOSED]~~
ORDER TO FILE FIRST AMENDED**

13
14 Plaintiffs MICHELE SMITH, acting on her on behalf and as Guardian ad Litem for M.M.,
15 (“Plaintiffs”) and Defendants TOBINWORLD, SARA FORGHANI, ANDREW ALTES, and
16 ANTIOCH UNIFIED SCHOOL DISTRICT (hereinafter “AUSD”) jointly submit this Stipulation
17 and [Proposed] Order to File First Amended Complaint.

18 WHEREAS, on April 4, 2016, the Plaintiffs filed the above caption action entitled Michele
19 Smith, et. al., v. Antioch Unified School District, et. al., U.S.D.C. Case No. 3:16-01676-JCS,
20 hereinafter referred to as the “Smith Federal Action”;

21 WHEREAS, previously on April 27, 2016, the Plaintiffs filed a complaint in Contra Costa
22 County Superior Court, entitled Smith, et al., v. Antioch Unified School District, et. al., Superior
23 Court of Contra Costa Case No. CIVMS C16-00782, hereinafter referred to as the “Smith State
24 Action”;

25 WHEREAS, the Smith Federal Action contains federal claims for Violation of Section 504
26 of the Rehabilitation Act of 1973 against Defendant Tobinworld, Violation of Section 504 of the
27 Rehabilitation Act of 1973 against Defendant Antioch Unified, Discrimination in Violation of the
28 Americans with Disabilities Act against Defendant Antioch Unified, Violation of the Unruh Act

1 against Defendant Tobinworld, Violations of the Unfair Business Practices, California Code
2 Section 17200 against Defendant Tobinworld, False Imprisonment against Defendant Altes,
3 Intentional Infliction of Emotional Distress against Defendants Tobinworld, Forghani and Altes,
4 Negligence against Defendants Tobinworld, Forghani and Altes, Negligent Hiring, Supervision or
5 Retention against Defendants Tobinworld and Forghani, Violations of California Education Code
6 Section 220 against Defendant Tobinworld, and Violation of a Mandatory Duty against Defendants
7 Forghani and Altes;

8 WHEREAS, the Smith State Action contains state causes of action for Violations of
9 California Education Code Section 220 against Defendant Antioch Unified and Negligence against
10 Defendant Antioch Unified;

11 WHEREAS, the two actions involve common issues of fact and law and involve the same
12 Plaintiffs and Defendants;

13 WHEREAS, this Court has already granted Plaintiffs leave to file a First Amended
14 Compliant in federal court in response to this Court's ruling on Defendant Tobinworld's Motion to
15 Dismiss, dated June 28, 2016;

16 WHEREAS, Plaintiffs and Defendant Antioch Unified have met and conferred about ways
17 to proceed with Smith's State Complaint, and have agreed to amend Smith's Federal Complaint to
18 include the state causes of action;

19 WHEREAS Plaintiffs shall file a First Amended Complaint on or before July 28, 2016;

20 WHEREAS, as a material condition of agreeing to include the state causes of action against
21 Antioch Unified in the First Amended Complaint, Defendant Antioch Unified waives their 11th
22 Amendment immunity from suit in federal court as to state claims. However, Defendant Antioch
23 Unified expressly does not waive any other defenses to any state causes of action and/or federal
24 claims asserted by the Plaintiffs herein;

25 WHEREAS, Defendants Tobinworld, Forghani and Altes have been informed of the
26 agreement between Plaintiffs and Defendant Antioch Unified to incorporate the state causes of
27 action into the First Amended Complaint, and have no objection to such an amendment; and

28 ///

1 WHEREAS, the parties agree that should the federal court dismiss the federal claims, the
2 litigation shall remain in federal court unless the federal court orders otherwise;

3 IT IS SO STIPULATED:

4 Dated: July 28, 2016

LAW OFFICES OF TODD BOLEY

5 /s/ M Feldman

MAUREEN FELDMAN

6 Attorney for Plaintiffs

7
8 Dated: July 28, 2016

HINTON ALFERT, PC

9 /s/ P Alfert

Peter Alfert

10 Attorney for Plaintiffs

11 Dated: July 28, 2016

PERRY JOHNSON ANDERSON MILLER &
12 MOSKOWITZ, LLP

13 /s/ A D'Arcy

ANNE D'ARCY

14 Attorney for Defendants Tobinworld
15 And Sara Forghani

16 Dated: July 28, 2016

ERICKSEN ARBUTHNOT

17 /s/ L Lindstrom

LOIS A. LINDSTROM

18 Attorney for Defendant Andrew Altes

19 Dated: July 28, 2016

EDRINGTON, SCHIRMER & MURPHY

20 /s/ D Donohoe

DOLORES DONOHOE

21 Attorney for Defendant Antioch Unified
22 School District

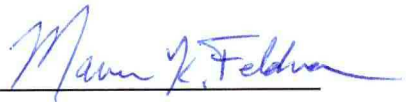
1 **ATTESTATION STATEMENT**

2 I, MAUREEN K. FELDMAN, declare as follows:

3 1. I am an attorney duly licensed to practice law in the State of California. I am one of the
4 attorneys representing the Plaintiffs herein. I have personal knowledge of the matters declared
5 herein and could testify truthfully thereto if called as a witness.

6 2. Concurrence in the filing of this document has been obtained from each of the other
7 signatories to this document. I will maintain records to support this concurrence for subsequent
8 production for the Court, if so ordered, or for inspection upon request by a party, until one year
9 after the final resolution of the action (including appeal, if any).

10 I declare under the penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct, and that this declaration was executed on July 28, 2016 in Alameda,
12 California.

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15 MAUREEN K. FELDMAN
16 Attorney for Plaintiffs
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~~PROPOSED~~ ORDER

Having read and considered the Joint Stipulation and [Proposed] Order to file First Amended Complaint,

1. Plaintiffs are granted leave to file a First Amended Complaint in this court on or before July 28, 2016. The First Amended Complaint shall combine all the parties and all state causes of action and all federal claims asserted in the two actions.
2. Defendants' response to the First Amended Complaint shall be due on August 18, 2016.
3. Plaintiffs shall dismiss the Smith State Action within 10 days of filing the First Amended Complaint with this court.
4. By agreeing to the filing of the First Amended Complaint in this court, Defendant Antioch Unified has waived their 11th Amendment immunity from suit in federal court but does not waive any other defenses to any state causes of actions and/or federal claims asserted by Plaintiffs herein.

IT IS HEREBY ORDERED.

Dated: August 2, 2016



Hon. Judge R. Seeborg